



February 6, 2023

Via ECF

The Honorable Ramon E. Reyes
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Mirkin, et al. v. XOOM Energy, LLC, et al.*, No. 18 Civ. 2949 (ARR) (RER) (E.D.N.Y.)

Dear Judge Reyes:

The parties write jointly in response to Your Honor's February 3, 2023 Order with this status report regarding the upcoming February 9, 2023 teleconference. At this time, the parties do not believe that the February 9 status conference is necessary.

The parties are proceeding with the class certification briefing schedule ordered by Judge Ross on January 6, 2023. Last Friday, February 3, Defendants served their opposition to Plaintiffs' motion for class certification, and Plaintiffs' reply in support of the motion is due March 17, 2023.

The Court has also set a briefing schedule for Defendants' summary judgment motion with the following deadlines: March 3, 2023 (motion); April 12, 2023 (response); and May 5, 2023 (reply).

Plaintiffs' Additional Statement:

Plaintiffs have not yet had an opportunity to fully review Defendants' class certification opposition, and there may be issues raised in the opposition that would warrant further discussions between the parties.

In addition, Plaintiffs are investigating certain issues regarding Defendants' recent disclosure of XOOM customer data and the pricing contractual language at issue. These customers were automatically switched from fixed to variable rate XOOM plans, and Plaintiffs are considering whether additional data production is needed. *See* ECF No. 105, 2/3/2022 Hr'g Tr. at 10:10–21 (Your Honor ordering production of exemplar contracts for fixed to variable rate customers). Plaintiffs raised this issue with Defendants on December 19, 2022, but the parties have not yet met and conferred to resolve it.

Defendants' Additional Statement:

There was not a "recent disclosure" of customer data or "the pricing contractual language at issue." The pricing language at issue is in a contract that was attached to the original and

amended complaints. Defendants also produced the exemplar fixed-to-variable contracts and customer data in June and July 2022, and the contracts were addressed in Plaintiffs' class certification motion. In November 2022, Plaintiffs informed Defendants that a sub-group of customers did not appear to be included in that data. Defendants determined that it had been inadvertently left out of the production and made a supplemental production to Plaintiffs on December 6, 2022. That supplemental production is not the subject of any Rule 23 argument in Plaintiffs' class certification motion or Defendants' opposition.

Thank you for the Court's attention to this matter.

Respectfully submitted,

/s/ Michael D. Matthews, Jr.

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